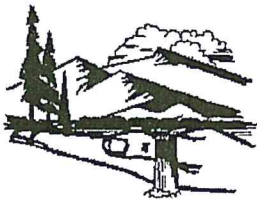




Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Matthew H. Mead, Governor

Todd Parfitt, Director

October 21, 2015

Mr. Steven Sondergard
Sinclair Wyoming Refining Company
PO Box 277
Sinclair, WY 82334

CERTIFIED MAIL

RE: Notice of Violation
Docket # 5625-15

Dear Mr. Sondergard:

Enclosed you will find a Notice of Violation (NOV) and Order issued to Sinclair Wyoming Refining Company by the Department of Environmental Quality, Air Quality Division, for failure to operate an ambient NO₂ and SO₂ monitoring program and network in accordance with 40 C.F.R. parts 50 and 58. This is a violation of Condition 9 of Permit MD-410 and Conditions 27, 28, and 29 of Permit MD-12620.

As the Department and this Division consider the failure to comply with air quality permit conditions to be a serious matter, I have referred this violation to the State Attorney General's office.

This NOV contains Orders requiring that Sinclair Wyoming Refining Company complete the following within sixty (60) days:

- Submit a permit modification application to the Wyoming Department of Environmental Quality, Air Quality Division, New Source Review Program, in order to alter its permitted ambient air boundary to reflect the fence between the ambient SO₂ and NO₂ monitor and Golf Course Road.
- Physically relocate the SO₂ and NO₂ monitor to a location in ambient air, downwind of the current location, in accordance with 40 C.F.R. parts 50 and 58.
- Complete installation of the in-town ambient SO₂ monitor that the Sinclair Wyoming Refining Company is currently in the process of installing.

Should you have any questions or comments regarding this matter, please feel free to contact me at (307) 777-7391.

Sincerely,

Cole Anderson
Interim Administrator
Air Quality Division

cc: Todd Parfitt, Fred DiLella, Ann Shed, Landon Brown, Elizabeth Morrisseau, Brian Bohlmann

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

ADMIN/OUTREACH	ABANDONED MINES	AIR QUALITY	INDUSTRIAL SITING	LAND QUALITY	SOLID & HAZ. WASTE	WATER QUALITY
(307) 777-7758	(307) 777-6145	(307) 777-7391	(307) 777-7369	(307) 777-7756	(307) 777-7752	(307) 777-7781
FAX 777-7682	FAX 777-6462	FAX 777-5616	FAX 777-5973	FAX 777-5864	FAX 777-5973	FAX 777-5973



**BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING**

IN THE MATTER OF THE NOTICE OF VIOLATION)	
AND ORDER ISSUED TO)	
SINCLAIR WYOMING REFINING COMPANY)	DOCKET NO. 5625 -15
MR. STEVEN SONDERGARD)	
P.O. BOX 277)	
SINCLAIR, WY 82334)	

NOTICE OF VIOLATION AND ORDER

NOTICE IS HEREBY GIVEN THAT:

1. The Wyoming Department of Environmental Quality, Division of Air Quality (DEQ), has found the Sinclair Wyoming Refining Company to be in violation of Permit MD-410 and Permit MD-12620 in the operation of the Sinclair Refinery, located in the town of Sinclair in Carbon County, Wyoming. Both permits were duly issued under § 35-11-801 of the Wyoming Environmental Quality Act (Act) and Chapter 6, Section 2 of the Air Quality Rules and Regulations (Air Quality Rules).
2. The Act states, "In granting permits, the Director may impose such conditions as may be necessary to accomplish the purpose of this act which are not inconsistent with the existing rules, regulations and standards." Wyo. Stat. Ann. § 35-11-801(a).
3. Chapter 6, Section 2 of the Air Quality Rules prescribes the applicability and procedures for issuing construction and modification permits and for modifying existing permits. Rules Wyo. Dep't of Env'tl. Quality, Air Quality, ch. 6, § 2.
4. "Ambient air" refers to the portion of the atmosphere, external to buildings, to which the general public has access. *See*, 40 C.F.R. § 50.1(e), Rules Wyo. Dep't of Env'tl. Quality, Air Quality, ch. 2, § 1.
5. The EPA has not promulgated rules delineating which factors determine whether the general public has access to an industrial area and there is no case law specifically on point. Over the years, the EPA has outlined a consistent interpretation of the term "ambient air" through a variety of interpretive documents and publically-available letters. That consistent interpretation establishes that areas external to buildings are only exempted from ambient air when general public access is barred through (1) sufficient physical boundaries and (2) policies that do not allow general public access within those physical boundaries. It is reasonable to assume that a Court would find this consistent agency interpretation to be persuasive.
6. Generally, a company can restrict public access, and delineate ambient air boundaries, by installing effective physical barriers, such as walls or sufficiently impervious fences. *See, e.g.*, Letter from Douglas M. Costle, Administrator, United States Environmental Protection Agency, to Senator Jennings Randolph, December 19, 1980, at p. 1.
7. However, where a company has granted access for certain members of the general public, the areas of the facility to which those members of the general public have been given access are considered to be in ambient air. *See, e.g.*, Letter from Nancy Helm, Federal and Delegated Air Programs, United States Environmental Protection Agency, Region 10, to John Kuterbach, Alaska Department of Environmental Quality, September 11, 2007, at p. 2; Letter from Donald C. Toensing, Chief, Air Permitting and Compliance Branch, United States Environmental Protection Agency, Region 7, to W. Clark Smith, Nebraska Department of Environmental Quality, August 1, 2000, at p. 1.
8. On or about June 1, 1999, the DEQ issued Permit MD-410 to the Sinclair Oil Corporation for the Sinclair Refinery, located in Carbon County, Wyoming (Facility). On or about February 1, 2006, this Facility and its permits transferred to Sinclair Wyoming Refining Company.

9. Condition 9 of Permit MD-410 states:

That Sinclair Oil Corporation shall continue to operate in accordance with the requirements of 40 CFR Parts 50 and 58, an approved ambient sulfur dioxide monitoring system at the Sinclair Refinery. The data generated by the monitoring system shall be submitted to the Division in an approved format and on a quarterly basis within 60 days of the end of each quarter.

10. Sometime in 2010, the Sinclair Wyoming Refining Company installed a fence between the ambient SO₂ monitor and Golf Course Road.

11. Permit MD-12620 was issued on October 15, 2012 to the Sinclair Wyoming Refining Company for the Facility. Permit MD-12620 was subsequently revised on July 29, 2013. Those revisions are unrelated to the conditions cited below.

12. Condition 27 of Permit MD-12620 states:

Sinclair Wyoming Refining Company shall operate, in accordance with the requirements of 40 CFR parts 50 and 58, an approved ambient monitoring program that includes an ambient NO₂ and SO₂ monitoring network at the Sinclair Refinery to demonstrate compliance with the ambient standards for NO₂ and SO₂. Sinclair Wyoming Refining Company shall maintain a quality assurance plan for the monitoring network, as required by 40 CFR part 58 and shall be approved by the Division. Sinclair Wyoming Refining Company shall obtain approval from the Division prior to siting the ambient NO₂ monitoring network.

13. Condition 28 of Permit MD-12620 states:

Sinclair Wyoming Refining Company shall comply with all commitments made in the quality assurance plan for the ambient NO₂ and SO₂ monitoring network in Condition 27 for the Sinclair Refinery, and the data generated by the ambient NO₂ and SO₂ monitoring network shall be submitted in a Division approved format on a quarterly basis, within sixty (60) days following the end of the quarter.

14. Condition 29 of Permit MD-12620 states, in pertinent part:

...The ambient NO₂ monitoring network shall remain in operation for a minimum of three (3) years from the date of startup of the monitor. Authorization to shutdown the ambient NO₂ monitoring network is required from the Division prior to shutdown.

15. On June 11, 2013, Sinclair Wyoming Refining Company wrote a letter to the DEQ proposing to co-locate the ambient NO₂ monitor required by Permit MD-12620 with the existing ambient SO₂ monitor. ("SWRC is proposing to install the ambient NO₂ monitoring system at the same location as the existing SO₂ ambient monitoring station.")

16. On or about June 26, 2015, the Sinclair Wyoming Refining Company removed the fence constructed in 2010 between the ambient NO₂ and SO₂ monitor and Golf Course Road and replaced it with a taller and more impervious fence.

17. The Sinclair Wyoming Refining Company's alleged violations consist of the failure to operate an ambient NO₂ and SO₂ monitoring program and network in accordance with 40 C.F.R. parts 50 and 58, as required by Condition 9 of Permit MD-410 and Conditions 27, 28, and 29 of Permit MD-12620.

18. This Notice is being sent to the Sinclair Wyoming Refining Company, under 35-11-701(c)(i) of the Act, which states:

In case of failure to correct or remedy an alleged violation, the director shall cause to be issued and served upon the person alleged to be responsible for any such

violation a written notice which shall specify the provision of this act, rule, regulation, standard, permit, license, or variance alleged to be violated and the facts alleged to constitute a violation thereof, and may require the person so complained against to cease and desist from the violation within the time the director may determine.

WHEREFORE IT IS HEREBY ORDERED THAT:

1. Within sixty (60) days of receipt of this Notice of Violation and Order, the Sinclair Wyoming Refining Company shall submit a permit modification application to the Wyoming Department of Environmental Quality, Air Quality Division, New Source Review Program, in order to alter its permitted ambient air boundary to reflect the fence between the ambient SO₂ and NO₂ monitor and Golf Course Road. Questions related to this requirement may be directed to Cole Anderson, New Source Review Program Manager and Interim Air Quality Administrator, at (307) 777-5924 or cole.anderson@wyo.gov.
2. Within sixty (60) days of receipt of this Notice of Violation and Order, the Sinclair Wyoming Refining Company shall physically relocate the SO₂ and NO₂ monitor to a location in ambient air, downwind of the current location, in accordance with 40 C.F.R. parts 50 and 58. This physical relocation may not occur without prior consultation with and concurrence from the Wyoming Department of Environmental Quality, Air Quality Division, Monitoring Program. Questions related to this requirement may be directed to Cara Keslar, Monitoring Section Supervisor, at (307) 777-8684 or cara.keslar@wyo.gov.
3. Within sixty (60) days of receipt of this Notice of Violation and Order, the Sinclair Wyoming Refining Company shall complete installation of the in-town ambient SO₂ monitor that the Sinclair Wyoming Refining Company is currently in the process of installing. Questions related to this requirement may be directed to Cara Keslar, Monitoring Section Supervisor, at (307) 777-8684 or cara.keslar@wyo.gov.

THIS ORDER is final unless, not later than ten (10) days after the date that this Notice of Violation and Order is served, the Sinclair Wyoming Refining Company requests, in writing, a hearing before the Environmental Quality Council. If such a request is filed, this order shall be stayed pending a final determination from the Environmental Quality Council. Wyo. Stat. Ann. § 35-11-701(c)(ii). Staying this order will not stay any pending deadlines created by federal statutes.

NOTHING IN THIS ORDER shall be interpreted to in any way limit or contravene any other remedy available under the Environmental Quality Act, nor shall this Order be interpreted as being a condition precedent to any other enforcement action.

ORDERED this 21 day of October, 2015.



Todd Parfitt
Director
Department of Environmental Quality



Cole Anderson
Interim Administrator
Air Quality Division

Please direct all inquiries to Cole Anderson, Interim Administrator, Division of Air Quality, Department of Environmental Quality, 200 W. 17th Street, Cheyenne, Wyoming 82002. (Telephone: 307-777-5924.)